

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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PEAK CORPORATION,

Plaintiff,

- against -

EL VIAJERO BRANDS,

Defendant.
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**REPORT AND
RECOMMENDATION**

07 CV 1075 (ENV)

On March 13, 2007, plaintiff Peak Corporation filed this diversity action, alleging breach of contract by defendant El Viajero Brands. After several months elapsed with no action being taken in the case, the Court issued an Order on August 6, 2007, directing the parties to report on the status of the case and warning that if no report were received, the Court would recommend that the case be dismissed for lack of prosecution. On September 4, 2007, plaintiff requested additional time in which to serve the summons on defendant, which the Court granted. By letter dated January 30, 2008, plaintiff indicated that the parties were engaged in settlement negotiations, which evidently were unsuccessful.

By letter dated March 6, 2008, plaintiff stated that it would attempt to convince defendant to file an answer and that should its efforts be unsuccessful, that it would move for default by April 18, 2008. On June 9, 2008, well after the time in which either defendant's answer or plaintiff's motion for default should have been filed, the Court issued another status Order, warning again that if no such report were received, this Court would recommend dismissal for failure to prosecute.

Since the Court has received no response to its Order and nothing has transpired in this

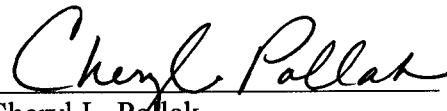
case, this Court respectfully recommends that the case be dismissed for failure to prosecute.

Any objections to this Report and Recommendation must be filed with the Clerk of the Court, with a copy to the undersigned, within ten (10) days of receipt of this Report. Failure to file objections within the specified time waives the right to appeal the District Court's Order. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 6(a), 6(e), 72; Small v. Sec'y of Health & Human Servs., 892 F.2d 15, 16 (2d Cir. 1989).

The Clerk is directed to send copies of this Order to the parties either electronically through the Electronic Case Filing (ECF) system or by mail.

SO ORDERED.

Dated: Brooklyn, New York
August / , 2008


Cheryl L. Pollak
United States Magistrate Judge